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**IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
**FOR THE COUNTY OF LANE**

INNOVATIVE SPORTS INC., an Oregon corporation,

*Plaintiff,*

*v.*

COLUMBIA SPORTSWEAR COMPANY, an Oregon corporation, NCS POWER, INC., a Washington corporation, THE ALLYN GROUP, LLC, a Washington limited liability company,

*Defendants.*

Case No. 1201206333

**COMPLAINT**

**JURY TRIAL DEMANDED**

Oregon Uniform Trade Secrets Act (O.R.S. 646.461)

Breach of Contract

Intentional Interference with Prospective Economic Advantage

Tortious Interference with Contract

**Not Subject to Arbitration**: Damages exceed $50,000

**Fee Authority:** ORS 21.160(1)(e): Damages exceed $10,000,000.00

## NATURE OF THE ACTION

1. Plaintiff Innovative Sports Inc. is a pioneer in heated clothing and wearable electronics. For nearly a decade, where others have failed, Plaintiff has succeeded in designing heated clothing that is safe and functional.

2. Based on Plaintiff's success and innovation in the field, entities like Defendant Columbia Sportswear Company ("Columbia"), as well as Defendants NCS Power, Inc. and The Allyn Group, LLC, have sought out Plaintiff as a partner in the emerging industry of heated clothing. Unfortunately, partnering with Plaintiff was either not enough for these companies, or, they simply saw more reward in misappropriating Plaintiff's technology and trade secrets. Either way, over a several year period, Defendants collected information, products, and technology from Plaintiff through short lived business relationships, wrongfully disclosed that information and Plaintiff's actual products between themselves, shared the technology with third parties, and finally, produced merchandise directly misappropriating features in Plaintiff's products and utilizing its technology.

## PARTIES

3. Plaintiff Innovative Sports Inc. is a corporation incorporated and existing under the laws of the State of Oregon, with its principal place of business located at 1137 Spyglass Drive, Eugene, Oregon 97401.

4. Defendant Columbia Sportswear Company is a corporation incorporated and existing under the laws of the State of Oregon, with its principal place of business located at 14375 NW Science Park Drive, Portland, Oregon 97229.

5. Defendant NCS Power, Inc. is a corporation incorporated and existing under the laws of the State of Washington, with its principal place of business located at 5139 Northeast 94th Avenue # F, Vancouver, Washington 98662.

6. Defendant The Allyn Group, LLC, is a limited liability company incorporated and existing under the laws of the State of Washington, with its principal place of business located at 18442 State Route 3, Allyn, Washington 98524. The Allyn Group is an alter ego of Defendant NCS Power, as they intermingle funds, share principals and executives including Doug Chandler, Lance

Chandler, and Wade Au, and The Allyn Group enters into contracts and generally does business by and through NCS Power. Such intermingled interactions include Plaintiff Innovative Sports receiving payments directly from The Allyn Group for services rendered to NCS Power. Throughout this Complaint, Defendants NCS Power and The Allyn Group shall be collectively referred to in the singular as "NCS" or "NCS Power."

## JURISDICTION & VENUE

7. Jurisdiction is proper in this Court pursuant to ORCP 4 as both Plaintiff and Defendant Columbia are corporations existing under the laws of the State of Oregon and both are engaged in substantial business operations within this State. This Court has personal jurisdiction over Defendant NCS and Defendant The Allyn Group because they transact significant business in the State of Oregon and Lane County, including entering into contracts and selling merchandise here. Additionally, venue is proper in Lane County because Plaintiff has its principal place of business in Lane County, a substantial portion of the conduct and events giving rise to Plaintiff's claims took place here, and binding contracts between the Parties call for disputes to be resolved in this County.

## FACTUAL ALLEGATIONS

8. In late 2003, Plaintiff Innovative Sports was in the vanguard of technology-enabled clothing with the advent of the heated "pitching sleeve," utilized by professional and collegiate athletes, and the introduction of its uniquely designed lithium battery powered heated jackets.

9. In the following year, the competitive market for producing heated jackets became notably smaller as the only other company producing heated jackets discontinued its line following fire safety concerns. Upon its exit from the market, Plaintiff remained as the sole maker of safe and functional heated clothing products.

10. Likewise, during this time Plaintiff acquired exclusive rights to the premier manufacturer of metal "yarn" in the United States, an essential part of heated clothing.

11. Not surprisingly, with Plaintiff's superior product and position in the market, third party clothing manufactures took significant interest in partnering with it in the production of heated clothing. One such third party was Defendant Columbia.

***Plaintiff's First Set of Meetings with Columbia***

12. In December 2004, executives from Innovative Sports, including CEO and founder Colby Taylor, met with numerous executives and product designers from Defendant Columbia, including COO Mark Sandquist. During that meeting, Mr. Taylor presented Innovative Sports's heated jacket and answered general questions about the product. However, no confidential information was disclosed at that time.

13. Towards the close of the meeting, Columbia suggested producing a co-branded jacket. At that point, Mr. Taylor requested that Mr. Sandquist, on behalf of Columbia, and others sign a Non-Disclosure Agreement ("NDA") before any further discussions occurred.

14. Approximately one month later, Mr. Taylor and other employees of Plaintiff again met with numerous Columbia employees. At the beginning of that meeting, Mr. Sandquist executed an NDA on behalf of Defendant Columbia. The NDA signed by Mr. Sandquist is binding on Defendant Columbia for a ten-year period from its execution.

15. At that meeting, Mr. Taylor explained in detail various technical aspects of Plaintiff's heated jackets, including the proprietary design, the materials used, the arrangement of the heating elements, and interconnections used. Additionally, the meeting participants discussed the manufacture of a snow jacket with MP3 enabled controls.

16. Significant discussions also took place at this meeting about the production of a co-branded jacket and various channels for marketing and sale.

17. Following the meeting, Plaintiff's employees sought to continue discussions with Defendant Columbia, but Columbia brusquely informed them that they were pursuing a non-electrical technology for heated clothing that was more compact, and ended negotiations with Plaintiff. However, the product described by Defendant Columbia never came to market.

*Plaintiff's Second Set of Meetings with Columbia & Plaintiff's USB Charger Technology*

18. In 2005 and 2006, Plaintiff experienced notable success and publicity with its heated products. Plaintiff's heated pitching sleeve continued to be used by collegiate and professional athletes and received increased coverage in the broadcast media. Likewise, numerous professional broadcasters on ESPN's Baseball Tonight, Sportscenter, and Monday Night Football wore heated jackets made by Plaintiff during sporting events, including in some cases while on live telecasts. Additionally, Plaintiff provided a variety of custom products to the Department of Defense for use by military special operations forces.

19. Plaintiff additionally entered into discussions with competitors of Columbia, including Nike, Burton, Spyder, and Under Armor, all under the protection of NDAs.

20. Following this increased publicity, Plaintiff and Columbia again began to discuss working together. In late 2006, Mr. Taylor notified Mr. Sandquist that Plaintiff had developed new features for its heated jacket, including a built-in system to charge portable electronics. Mr. Sandquist directed Mr. Taylor to contact Doug Prentice, Director of Merchandising at Columbia, and a meeting was setup shortly thereafter. Initially, an employee of Plaintiff had a brief meeting with employees of Columbia and discussed various aspects of fuel cell technology unrelated to Plaintiff's new products. Subsequent to that short meeting, but prior to having an in-depth discussion about Plaintiff's technology, Mr. Prentice and Dave Robinson (Director of Hunting Apparel) both signed additional NDAs on behalf of Columbia (even though Columbia and its employees were still bound by the NDA signed by Mr. Sandquist). The NDAs signed by Mr. Prentice and Mr. Robinson are binding on Defendant Columbia for a ten-year period from their execution.

21. Plaintiff requested these additional NDAs out of an abundance of caution because employees of Plaintiff intended to disclose and demonstrate to Columbia new and unique technology unavailable anywhere else on the market.

22. Specifically, between late 2005 and early 2006 Plaintiff had conceived and developed a heated clothing battery that included Universal Serial Bus (USB) ports designed to charge consumer electronics such as cellular telephones and MP3 players.

23. Plaintiff's uniquely designed power delivery and thermal management system allowed the battery pack to heat an item of clothing such as a jacket or vest, and at the same time charge the wearer's portable electronics. Likewise, the battery pack permitted the wearer to charge his or her electronics even when not heating the clothing.

24. During the February 2007 meeting between Plaintiff and Defendant, Mr. Taylor presented the USB charging technology incorporated into a heated jacket. In so doing, employees of Columbia handled a completed version of the battery pack and were given printed schematics (marked as confidential) of the power management system and electronic board underlying the USB chargers.

25. Columbia's employees acknowledged that they had never seen this technology or product, and expressed considerable interest in utilizing the technology and features in Columbia's products. Columbia made a verbal commitment to make two jackets with Plaintiff: a higher end jacket that included the USB technology and a full size heating element, as well as a second, less expensive jacket that only featured heated pockets.

26. At the close of the meeting, Mr. Robinson informed Mr. Taylor that he was a personal friend of Plaintiff's biggest investor, Carolyn Chambers. Mr. Robinson requested that Mr. Taylor inform Ms. Chambers that Columbia and Innovative Sports were going to produce heated clothing together, that Innovative Sports would need to "look good" when the partnership was announced, and that its production facilities should be expanded.

27. Mr. Taylor immediately conveyed this message to Ms. Chambers, who had Plaintiff move its production facilities to a more modern facility. Ms. Chambers additionally asked that Mr. Taylor research new production machinery that the she would help finance.

28. Within a few weeks after the initial meeting, technical staff from both Plaintiff and Columbia attended a meeting during which Plaintiff's heating elements, USB enabled battery

packs, along with other specific design and production details were all provided and disclosed to Columbia.

29. At some point during the meeting, Mr. Sandquist appeared and interrogated Plaintiff's employees regarding prospective research and development costs.

30. This type of questioning was inappropriate, however, because Mr. Sandquist had resolved this issue with Mr. Taylor over the phone days before, during which time Mr. Taylor indicated that Plaintiff would bear all research and development costs. Subsequently, Plaintiff made the same commitment in writing.

31. Yet, when Plaintiff's technical staff could not provide an answer, Mr. Sandquist called Mr. Taylor in an agitated state and complained that he now had "issues" with the project.

32. Approximately one week later, Mr. Prentice emailed Mr. Taylor and informed him that Columbia had decided not to move forward with the co-branded products previously discussed.

33. Despite Mr. Taylor responding to all of Mr. Prentice's stated concerns, Columbia withdrew its commitment to produce products with Plaintiff.

34. When Mr. Taylor informed Ms. Chambers, Plaintiff's largest investor, of Columbia's abrupt withdrawal, Ms. Chambers ordered Plaintiff's machinery removed from its new production facilities, closed down the line of credit she had provided Plaintiff, and informed Plaintiff that she would no longer invest in the company. Ms. Chambers' rapid and unexpected departure nearly resulted in the complete collapse of Innovative Sports.

35. Thereafter, Mr. Taylor was forced to move Innovative Sports out of Oregon and into southern California to seek a less expensive location to continue development and production of its products.

***Plaintiff's Partnership with NCS Power***

36. In the fall of 2008, Defendant NCS engaged Plaintiff to develop a heated jacket and heated gloves for NCS's third party clients. Specifically, Plaintiff would provide the network of metal heating elements for the products, and consult generally on the project.

37. Prior to starting that project, Brian Warf (Chief Executive Officer at NCS) executed an NDA with Plaintiff on behalf of NCS in or around February 2007. Again, out of an abundance of caution to protect Plaintiff's information and technology, Plaintiff also required that Lance Chandler (Chief Technology Officer at NCS) sign an NDA on behalf of NCS in or around April 2008.

38. At the same time, NCS and Plaintiff entered into an agreement wherein NCS would finance several hundred heating elements for Plaintiff. Plaintiff ordered the necessary materials to create the heating elements, and Mr. Taylor personally wired the heating elements and made them production ready. At least 100 of the finished heating elements were thereafter put into the possession of NCS.

39. While Plaintiff and NCS were working together, and NCS was in possession of various products developed by Innovative Sports, Michael "Woody" Blackford (Vice President Global Innovation at Columbia) was regularly visiting NCS's offices in Washington in relation to a product NCS had under development for Columbia.

40. During his visits, Mr. Blackford saw Plaintiff's heating elements and expressed to NCS employees that the products were very impressive and "revolutionary."

41. An employee of NCS informed Mr. Taylor via email that Mr. Blackford had been in the office and made specific comments about and showed interest in Plaintiff's products. However, Mr. Taylor was not interested in pursuing a business relationship with Columbia again until Plaintiff's work with NCS was complete.

42. Soon thereafter, NCS began expressing that it was having problems with Plaintiff's products, including issues with overheating. Prior to expressing its complaints to Plaintiff, NCS informed its third party clients that Plaintiff's products were malfunctioning and to blame for a delay in delivery. When NCS finally informed Plaintiff of the accusations, Mr. Taylor strongly disputed that such problems with the products could or did occur, as Plaintiff had *never* experienced the problems described by NCS in years of testing and sales. NCS did not provide Plaintiff with any proof of the problems it described.

43. Following these discussions, NCS banned Mr. Taylor and all employees of Innovative Sports from entering NCS's office, and told Plaintiff that it would not return the finished heating elements that Plaintiff had provided. Additionally, Mr. Taylor received multiple threatening letters from NCS's outside counsel warning him against contacting any customers of NCS and informing him that the business relationship between NCS and Plaintiff was over.

***Plaintiff's Third Meeting with Columbia***

44. Based on NCS's conduct, its retention of Plaintiff's technology, and the knowledge that employees of Defendant Columbia were working with NCS and had expressed interest in Plaintiff's products, Mr. Taylor contacted Mr. Blackford and asked him whether Columbia had received any heating elements from a third party. Mr. Blackford responded that Columbia did have heating elements in its possession that it had received from NCS. Mr. Taylor informed Mr. Blackford that those products belonged to Plaintiff and requested an immediate meeting.

45. Present at that meeting were Mr. Taylor, Mr. Blackford, Columbia's in-house counsel, John Motley, and an associate in-house counsel. Mr. Blackford produced heating elements that Mr. Taylor immediately identified as products belonging to Plaintiff, which Mr. Taylor had personally finished for production by hand. Mr. Taylor was able to produce from his own bag a heating element identical to the one held by Mr. Blackford.

46. Upon seeing the identical heating element and hearing Mr. Taylor's statements and demands for the return of Plaintiff's heating elements and other proprietary products, Mr. Motley stated that there had been a clear breach of the NDAs between Plaintiff and Defendant Columbia, and inquired about the existence of an NDA between Plaintiff and NCS. Mr. Motley instructed Mr. Blackford to turn over the heating elements in his possession to Mr. Taylor, and further instructed Mr. Blackford to state that a breach of the NDA had occurred and that Defendant would cease communication with NCS, all of which Mr. Blackford then stated to Mr. Taylor.

47. On information and belief, Columbia retained other information, heating elements, and technology belonging to Plaintiff, including but not limited to the 100 finished heating elements Plaintiff provided to NCS, all of which was and is subject to the NDAs signed by both Defendant

Columbia and Defendant NCS. When Mr. Taylor contacted Mr. Blackford following their in-person meeting, he was continually denied an opportunity to speak with him, and only directed to speak with in-house counsel, John Motley. Even though he had acknowledged a breach of the NDAs during their previous meeting, Mr. Motley denied to Mr. Taylor that any NDAs existed at all. Mr. Taylor was eventually directed to contact Columbia's General Counsel, Peter Bragdon. Despite contacting him numerous times, Mr. Bragdon never responded.

***Columbia's Release of Heated Jackets with Built-in USB Charging Capability***

48. In the fall of 2009, Defendant Columbia, through its Mountain Hardwear brand, released the "Radiance" and "Refugium" heated jackets. These jackets contained a clone of Plaintiff's USB charging battery design, a stainless steel yarn heating element network that mimicked Plaintiff's design, and a switching mechanism that mimicked Plaintiff's previously disclosed switch.

49. Prior to the release of these jackets, the built in USB charging capability had only appeared in demonstration jackets built by Plaintiff and had only been disclosed to Defendant Columbia under the protection of an NDA. This feature and technology did not exist anywhere else at the time.

50. Plaintiff, through Mr. Taylor, became aware of Defendant's new line of heated jackets in September 2009, after they had been made available to the public.

51. Defendant Columbia contracted with Ardica Technologies to provide batteries and heating elements for Defendant's jackets, and Weel Technologies to provide the switch technology. In having Ardica and Weel produce the heating element network and battery, Columbia disclosed and shared Plaintiff's technology with Ardica and Weel, including technology, information and products acquired through its 2007 meetings with Plaintiff, as well as through its dealings with NCS.

*52.* The Mountain Hardwear jackets were eventually recalled because, as a result of Columbia not pairing the correct voltage battery with the appropriate heating element network, the

jackets ran a high risk of overheating or potentially catching fire. Following the recall, the jackets were pulled from the market.

***Columbia's Release of Omni-Heat Electric Products with Built-in USB Charging Capability***

53. Even with its initial missteps, Columbia continued forward with the production of heated clothing, introducing its "Omni-Heat Electric" line of clothing in late 2011.

54. Like the "Radiance" and "Refugium" jackets, Defendant's new line prominently features a USB charging port of the same design and function as Plaintiff's original product. Since its release, Defendant Columbia has utilized the USB charging function as a key feature and primary marketing tool in promoting Omni-Heat Electric clothing, which has been featured by various media outlets including Engadget.com.

55. In November 2011, Defendant's Circuit Breaker jacket, which included the USB charger power management system, won Outside Magazine's Radical Design Award. However, approximately 400 of these jackets were also subject to a recall due to potential overheating issues.

56. Defendant's Omni-Heat Electric line of clothing continues to widely sell through a variety of retailers.

## COUNT I

**Violation of the Oregon Uniform Trade Secrets Act (O.R.S. 646.461)**

**(As Against All Defendants)**

57. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

58. Pursuant to O.R.S. 646.461(3), Plaintiff Innovative Sports is a "person" because it is an active corporation.

59. Pursuant to O.R.S. 646.461(4), the information, technology, products, designs, drawings, devices, methods, techniques, and processes that are the subject of this Complaint qualify as trade secrets because independent economic value can be derived from each, and each was and is subject to vigorous efforts to maintain its secrecy.

60. Specifically, the trade secrets at issue in this Complaint include:

a. The concept, design, and tangible production of a battery pack meant for powering a heated jacket, which contains USB ports for charging consumer electronics such as a cell phone or MP3 player. The battery pack's power delivery and thermal management system allows for charging to occur at the same time or separate from its heating capabilities, and can be easily accessed through a jacket pocket.

b. The concept, design, and tangible production of heating elements meant for a heated jacket made from metallic yarn, including stainless steel and copper plated stainless steel, and arranged in a series configuration. The process and design for creating the heating elements additionally contained unique design and construction aspects including a bi-directional heat control switch and state of the art waterproof Raychem solder interconnections.

61. Plaintiff could, did, and would have continued to derive economic value from the above identified trade secrets through the sale of heated clothing and apparel, including but not limited to jackets, vests, pants, and gloves for cold weather activities such as skiing, snowmobiling, hiking, and hunting, among others. The economic value of Plaintiff's trade secrets is apparent from its own sale of heated clothing containing the technology, as well as Defendant Columbia's sale of heated products including the "Radiance" and "Refugium" heated jackets, as well as jackets in its "Omni-Heat Electric" collection, all of which sold or presently sell for over $500 each, and in some cases as much as $1200. Plaintiff's trade secrets have substantial independent present and future value derived from the fact that the trade secrets were not and are not generally known to the public or Plaintiff's competitors, other than under the protection of an NDA.

62. Plaintiff employed more than reasonable measures to maintain the secrecy of the trade secrets identified above. In particular, Plaintiff required that any person or entity to which it planned to disclose confidential information sign a comprehensive NDA. The trade secrets at issue in this Complaint were not disclosed to any third party who did not execute an NDA.

63. Additionally, employees of Plaintiff were expressly instructed not to share proprietary information learned or developed while working for Plaintiff, and each employee was required to sign an NDA at the outset of his or her employment with Plaintiff.

64. Under the circumstances, these security measures were reasonable and obviously designed to limit the distribution of Plaintiff's sensitive and valuable information. Specifically, Defendants each signed one or more NDAs and were made aware that the information and technology being disclosed to them was confidential.

65. Defendant Columbia misappropriated Plaintiff's trade secrets in at least the following ways:

a. Constructing and selling a heated jacket battery system that included USB ports designed and marketed as charging ports for consumer electronics, which utilized the same or substantially similar design and specifications provided to Columbia by Plaintiff in meetings in or around February 2007.

b. Constructing and selling heated jackets that included heating elements which are the same or similar in terms of the stainless steel yarn, copper coated stainless yarn, and the design and structure of that yarn arranged as a heating element network inside the heated jacket.

c. Accepting heating elements, products, technology, and information from Defendant NCS, without notifying Plaintiff, and using those products and information for its own benefit.

d. Disclosing information to and sharing products with Ardica Technologies and Weel Technologies that it knew were Plaintiff's trade secrets.

66. Defendant Columbia knew or should have known that the information and products described above were trade secrets belonging to Plaintiff and could not be used or disclosed without Plaintiff's express permission. Defendant Columbia further knew or should have known that Defendant NCS had improperly acquired and disclosed Plaintiff's trade secrets to it.

67. Employees of Defendant Columbia signed three separate NDAs on behalf of Columbia that apply to the relevant time period between 2005 and the present. The NDAs explicitly prevented the disclosure to third parties or unauthorized use of such confidential information, technology, and products, which belonged to Plaintiff and/or was provided to NCS as confidential information to be used for a limited purpose.

68. Defendant NCS misappropriated Plaintiff's trade secrets in at least the following ways: Disclosing information to and sharing products with Defendant Columbia, including finished heating elements and other design and production information.

69. Defendant NCS knew or should have known that the information and products described above were trade secrets belonging to Plaintiff and could not be used or disclosed without Plaintiff's express permission. Defendant NCS further knew or should have known that Defendant Columbia was not permitted to acquire Plaintiff's trade secrets or use them in any way.

70. Two employees of Defendant NCS signed NDAs on behalf of NCS that apply to the relevant time period between 2007 and the present. The NDAs explicitly prevented the disclosure to third parties or unauthorized use of such confidential information, technology, and products.

71. As a direct and proximate result of Defendants' misappropriation of Plaintiff's trade secrets, Plaintiff has been damaged in the form of lost revenue, lost business opportunities, decrease in the value of its trade secrets, damage to its reputation, and damage to the industry in which it sells its products, all in an amount to be proven at trial. Additionally, by releasing products for public consumption that included Plaintiff's trade secrets, competitors of Plaintiff and Columbia, who previously viewed Plaintiff's trade secrets under the protection of an NDA, may now access Plaintiff's confidential technology and designs through replicating the products of Defendant Columbia. This exposure damaged and continues to damage Plaintiff in the form of lost business opportunities, lost revenue, and the decreased value of his trade secrets.

72. Defendants' misappropriation of Plaintiff's trade secrets was malicious and willful in that Defendants knowingly and intentionally misappropriated Plaintiff's trade secrets without authorization.

73. Plaintiff requests that the Court enter an order awarding all available damages under O.R.S. 646.465, including actual damages, punitive damages, and restitution, as well as reasonable attorneys' fees pursuant to O.R.S. 646.467. Additionally, Plaintiff requests that the Court enter an order providing for injunctive relief necessary to stop Defendants' ongoing and injurious misappropriation of its trade secrets.

## COUNT II

### Breach of Contract

### (As Against Defendant Columbia Only)

74. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

75. Plaintiff entered into valid and enforceable contracts with Defendant Columbia in the form of three signed NDAs.

76. Initially, through Mr. Sandquist, Defendant Columbia entered into an NDA with Plaintiff in or around February 2005.

77. Thereafter, through Mr. Robinson and Mr. Prentice, Defendant Columbia entered into NDAs with Plaintiff in or around February 2007.

78. Plaintiff and Defendant Columbia entered into the NDAs for the express purpose of protecting confidential information from unauthorized disclosure or use.

79. The information, technology, and products disclosed and utilized by Defendant Columbia without permission, as described throughout this Complaint, fall under the definition of "Confidential Information" set forth in section 1(a) of the NDAs signed by Defendant.

80. In disclosing Plaintiff's confidential information to Ardica Technologies and Weel Technologies without Plaintiff's knowledge or permission, Defendant Columbia breached the NDAs.

81. In utilizing, manufacturing, and selling heated jackets and other products that incorporated Plaintiff's trade secrets directly, Defendant Columbia breached the NDAs.

82. In knowingly accepting Plaintiff's trade secrets from Defendant NCS, without notifying Plaintiff of the disclosure or that it had come into possession of Plaintiff's confidential information, Defendant Columbia breached the NDAs.

83. By failing to return all technology and information wrongly acquired from NCS and Plaintiff directly, Defendant Columbia breached the NDAs.

84. Through its in-house counsel, Mr. Motley, and Mr. Blackford, Columbia expressly acknowledged and admitted that a breach of the NDAs had occurred as a result of Defendant Columbia accepting, being in possession of, and making use of Plaintiff's confidential information and technology.

85. As a direct and proximate result of Defendant Columbia's multiple breaches of the NDAs, Plaintiff has suffered harm in the form of lost revenue, lost business opportunities, decrease in the value of its trade secrets, damage to its reputation, and damage to the industry in which it sells its products, all in an amount to be proven at trial.

86. Plaintiff requests that the Court enter an order awarding all available damages for Defendant Columbia's breaches of the NDAs, as well as interest and reasonable attorneys' fees.

## COUNT III

### Breach of Contract

### (As Against Defendant NCS Power Only)

87. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

88. Plaintiff entered into valid and enforceable contracts with Defendant NCS in the form of two signed NDAs.

89. Brian Warf, on behalf of Defendant NCS, executed an NDA in or around February 2007. Lance Chandler, also on behalf of Defendant NCS, executed an NDA in or around April 2008.

90. Plaintiff and Defendant NCS entered into the NDAs for the express purpose of protecting Plaintiff's confidential technology, information and products from unauthorized disclosure or use.

91. The technology, information, and products disclosed and utilized by Defendant NCS without permission fall under the definition of "Confidential Information" set forth in section 1(a) of the NDAs.

92. In disclosing Plaintiff's confidential technology, information and products to Columbia, without Plaintiff's knowledge or permission, Defendant NCS breached the NDAs.

93. By failing to return to Plaintiff all technology, information and products wrongly retained by NCS, Defendant NCS breached the NDAs.

94. As a direct and proximate result of Defendant NCS's multiple breaches of the NDAs, Plaintiff has suffered harm in the form of lost revenue, lost business opportunities, decrease in the value of its trade secrets, damage to its reputation, and damage to the industry in which it sells its products, all in an amount to be proven at trial.

95. Plaintiff requests that the Court enter an order awarding all available damages for Defendant NCS's breach of the NDAs, as well as interest and reasonable attorneys' fees.

## COUNT IV

### Intentional Interference with Prospective Economic Advantage

### (As Against Defendant Columbia Only)

96. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

97. Plaintiff had a prospective economic advantage in the heated clothing and wearable electronics market in that it possessed unique technology, design, and manufacturing trade secrets that gave it advantages over its competitors and made its products desirable to the public, including a commercially unavailable heated jacket equipped with a battery pack capable of charging consumer electronics through a USB port.

98. Plaintiff was in the process of, and fully intended to, independently or in conjunction with a partner, sell heated jackets and other heated products to the public at large.

99. As a sizable market was emerging between 2004 and the present for heated clothing specific to winter weather generally, snow sports, and hunting, the sale of Plaintiff's unique heated products was a significant prospective economic advantage.

100. Defendant Columbia intentionally interfered with and disrupted Plaintiff's prospective economic advantage by inducing Plaintiff to share trade secrets under the guise of a co-branded partnership, abruptly terminating that partnership, retaining Plaintiff's trade secrets, sharing Plaintiff's trade secrets with third parties, and manufacturing products that directly incorporated Plaintiff's trade secrets for its own gain.

101. Defendant Columbia's interference was improper and carried out for an improper purpose because it intentionally misappropriated Plaintiff's trade secrets for profit, with full knowledge that it could not do so without Plaintiff's express permission.

102. As a direct and proximate result of Defendant Columbia's interference with Plaintiff's prospective economic advantage, Plaintiff has lost the opportunity to bring its unique products to market on an exclusive basis and has lost the competitive advantage it had while its trade secrets were held in confidence. Likewise, the failed performance of Defendant Columbia's misappropriated products has damaged the prospective market for Plaintiff to sell its own products and therefore, reduced the demand of consumers, reduced the prices at which such products may be sold, and reduced the willingness of prospective business partners to enter into contracts with Plaintiff to sell heated clothing.

103. Additionally, Defendant Columbia intentionally interfered with Plaintiff's existing and prospective business relationship with its primary investor, Ms. Chambers, by inducing Plaintiff to request additional funding and resources in order to produce a co-branded product with Columbia, knowing full well that it did not intend to produce merchandise with Plaintiff and only wanted to acquire its trade secrets. As a result of Columbia's abrupt withdrawal from any type of

business with Plaintiff, Plaintiff lost all future investment from Ms. Chambers and other tangible benefits she provided.

104. Plaintiff had an ongoing business relationship with Defendant NCS related to the design and manufacture of heating clothing. Defendant Columbia intentionally interfered in that relationship by inducing NCS to disclose Plaintiff's confidential trade secrets and inducing NCS to end its business relationship with Plaintiff. As a direct and proximate result, Plaintiff lost revenue in an amount to be proven at trial and lost its business relationship with NCS, as well as relationships with NCS's clients, including JetLites and Aladdin's Lamp.

105. As a direct and proximate result of Defendant Columbia's interference with Plaintiff's prospective economic advantage, Plaintiff has been damaged in the form of lost revenue, lost business opportunities, decrease in the value of its trade secrets, and damage to its reputation, all in an amount to be proven at trial.

106. Plaintiff requests that the Court enter an order awarding all available damages for Defendant Columbia's interference with its prospective economic advantage, as well as interest and reasonable attorneys' fees.

## COUNT V

### Intentional Interference with Prospective Economic Advantage

### (As Against Defendant NCS Power Only)

107. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

108. Plaintiff had a prospective economic advantage in the heated clothing and wearable electronics market in that it possessed unique technology, design, and manufacturing trade secrets that gave it advantages over its competitors and made its products desirable to the public, including a commercially unavailable heated jacketed equipped with a battery pack capable of charging consumer electronics through a USB port.

109. Plaintiff was in the process of, and fully intended to, independently or in conjunction with a partner, sell heated jackets and other heated products to the public at large.

110. As a sizable market was emerging between 2004 and the present for heated clothing specific to winter weather generally, snow sports, and hunting, the sale of Plaintiff's unique heated products was a significant prospective economic advantage.

111. Defendant NCS intentionally interfered with and disrupted Plaintiff's prospective economic advantage by inducing Plaintiff to share its trade secrets with NCS under the guise of a business partnership, and abruptly terminating the partnership, retaining Plaintiff's trade secrets, and sharing Plaintiff's trade secrets with a third party.

112. Defendant NCS's interference was improper and carried out for an improper purpose because it intentionally misappropriated and disclosed Plaintiff's trade secrets with full knowledge that it could not do so without Plaintiff's express permission.

113. Defendant NCS intentionally interfered with and disrupted Plaintiff's prospective economic advantage by informing its clients, specifically JetLites and Aladdin's Lamp, that Plaintiff's products and technology overheated and were to blame for NCS's inability to deliver the requested merchandise.

114. Defendant NCS's interference was improper and carried out for an improper purpose because it intentionally misrepresented to its clients that Plaintiff's products were faulty when it had full knowledge that no such malfunctions had occurred.

115. As a direct and proximate result of Defendant NCS's interference with Plaintiff's prospective economic advantage, Plaintiff has lost the opportunity to bring its unique products to market on an exclusive basis and has lost the competitive advantage it had while its trade secrets were held in confidence.

116. As a direct and proximate result of Defendant NCS's interference with Plaintiff's prospective economic advantage, Plaintiff has been damaged in the form of lost revenue, lost business opportunities, decrease in the value of its trade secrets, and damage to its reputation, all in an amount to be proven at trial.

117. Plaintiff requests that the Court enter an order awarding all available damages for Defendant NCS's interference with its prospective economic advantage, as well as interest and reasonable attorneys' fees.

## COUNT VI

### Tortious Interference with Contract

### (As Against All Defendants)

118. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

119. Plaintiff entered into three valid and enforceable NDAs with Defendant Columbia.

120. Plaintiff entered into two valid and enforceable NDAs with Defendant NCS.

121. At all relevant times, Defendant Columbia was aware that Plaintiff had entered into an NDA with Defendant NCS.

122. At all relevant times, Defendant NCS was aware that Plaintiff had entered into an NDA with Defendant Columbia.

123. Defendant Columbia intentionally induced the breach of Plaintiff's contracts with Defendant NCS by requesting that NCS provide and/or accepting Plaintiff's confidential trade secrets without first obtaining Plaintiff's express permission.

124. Defendant NCS intentionally induced the breach of Plaintiff's contracts with Defendant Columbia by offering and/or providing Columbia with Plaintiff's confidential trade secrets without first obtaining Plaintiff's express permission.

125. As a direct and proximate result of Defendants' tortious interference with the NDAs, Plaintiff has been injured in an amount to be proven at trial. The foregoing conduct of Defendants was oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages in amount to be proved at trial.

126. Plaintiff requests that the Court enter an order awarding all available damages for Defendants' tortious interference with its NDAs, as well as interest and reasonable attorneys' fees.

**WHEREFORE**, Plaintiff requests that the Court enter an Order providing for the following relief:

A. Declare that Defendants' actions, as set out above, violate the Oregon Uniform Trade Secrets Act (O.R.S. 646.461), constitute breach of contract, intentional interference with prospective economic advantage, and tortious interference with contract;

B. Award all economic, monetary, actual, consequential, statutory, compensatory and punitive damages caused by and to which Plaintiff is entitled to as a result of Defendants' conduct;

C. Award restitution against Defendants for all money to which Plaintiff is entitled in equity;

D. Award Plaintiff its reasonable litigation expenses and attorneys' fees;

E. Award Plaintiff pre- and post-judgment interest, to the extent allowable;

F. Enter injunctive and/or declaratory relief as is necessary to protect Plaintiff's interests; and

G. Award such other and further relief as equity and justice may require.

## JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Dated: March 27, 2012

Respectfully submitted,
MOORE & ASSOCIATES
Attorneys for Plaintiff

By: _____

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## VERIFICATION

I, Christopher C. Taylor, President of Plaintiff Innovative Sports Inc., state that I have knowledge of the contents of this Complaint, and the factual allegations contained herein are true and correct to the best of my knowledge, information and belief. I hereby declare that the above statement is true to the best of my knowledge and belief, and further declare that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Dated: March 27, 2012

Christopher C. Taylor